

2. The sum of plaintiffs' complaint against Pella is that certain windows and doors manufactured by Pella were negligently installed during the construction of their home by James G. Herman & Associates ("Herman"). Additionally, plaintiffs claim that the Pella windows and doors were caused to leak water into their home.

3. An essential element of plaintiffs' claim under the MMWA is that they have been damaged by Pella's breach of a warranty relative to a transaction involving a consumer product.

4. The windows and doors that are subject of this dispute do not fall under the MMWA definition of consumer products. Because this is an essential element of plaintiffs' claim that they cannot establish, summary judgment is appropriate.

5. In addition to this motion, Pella has separately filed a Memorandum in Support of its Motion for Summary Judgment as well as its Local Rule 56.1(a) Statement of Material Facts for which there are no genuine issues.¹

WHEREFORE, PELLA PRODUCTS, INC., incorrectly sued as Pella Windows and Doors, Inc. prays that this court enter a final and appealable order of summary judgment in its favor, and against Plaintiffs, John P. Miller and Terese A. Miller on Counts VI and VII of plaintiffs' complaint.

¹ Defendant Herman has also filed its motion to dismiss and motion for summary judgment which essentially cover the same subject matter and issues raised in this motion. Currently, there is a briefing schedule in place for Herman's motions. The parties are in agreement, if this court will allow them, to amend the current briefing schedule and enter one schedule for all motions. A proposed briefing schedule is attached hereto as Exhibit A.

Respectfully submitted,

s/Christopher J. Carlos

Christopher J. Carlos Bar Number: 6272028

Attorney for Defendant/Third Party Plaintiff

Pella Products, Inc.

Johnson & Bell, ltd.

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

s/Christopher J. Carlos

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|--|---|--------------------------------|
| JOHN P. MILLER and TERESE A. MILLER, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | 06 C 3573 |
| |) | |
| JAMES G. HERMAN, individually, and JAMES |) | Judge Wayne R. Anderson |
| G. HERMAN & ASSOCIATES, INC., an |) | |
| Illinois corporation, and PELLA WINDOWS |) | Magistrate Judge Morton Denlow |
| AND DOORS, INC., a Delaware corporation, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| PELLA PRODUCTS, INC., |) | |
| |) | |
| Third Party Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| JOSEPH NOBILIO CARPENTERS, |) | |
| |) | |
| Third Party Defendant. |) | |

PROPOSED BRIEFING SCHEDULE

Pursuant to The Honorable Wayne R. Andersen's case management procedures, the parties have agreed to the following briefing schedule in connection with the Herman Defendants' Motion to Dismiss and the Herman and Pella Products, Inc. Motions for Summary Judgment:

1. Plaintiffs to file any response briefs to all motions by February 27, 2008.
2. Herman and Pella are to file any reply briefs in support of their motions on or before March 12, 2008.

Respectfully submitted,

s/Christopher J. Carlos

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